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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1970

No. 989

BILLY BAXTER, INC.,
Petitioner,

v.

THE COCA-COLA COMPANY and
CANADA DRY CORPORATION,
Respondents.

RESPONDENTS' REPLY BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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January 27, 1971

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The asserted conflict between two other decisions, mentioned for the first time in petitioner's reply brief*, should not be the basis for granting certiorari in this case since the results in those cases turned upon the facts therein and not upon any different view of the law and the factual and legal settings of those cases are quite different from this case.

The decision below held that petitioner is not in the business of manufacturing, selling or purchasing carbo-

* The Petition, which was filed November 20, 1970, does not cite either of the cases upon which petitioner now relies for its asserted conflict, although those cases were decided September 8 and October 20, 1970.

nated beverages and for that reason lacks standing to sue for the alleged restraint of that line of commerce. In *Fields Productions, Inc.* v. *United Artists Corp.*, 432 F.2d 1010 (2d Cir., 1970), *petition for certiorari filed* (November 20, 1970), the Second Circuit applied the same standing to sue rule and held that the producer of a motion picture allegedly restrained by block-booking was not in the business of exhibiting films or distributing films for exhibition and therefore lacked standing to sue, holding also that plaintiff's alleged damage resulted not from the alleged block-booking but from a contractual dispute over allocating licensing receipts from exhibition. The Ninth Circuit stated it was applying the same standing to sue rule in *Mulvey* v. *Samuel Goldwyn Productions*, 433 F.2d 1073 (9th Cir., 1970). There standing existed because of the different facts; plaintiff was in the business since he had sold the motion pictures allegedly restrained by block-booking and was entitled to his selling price only out of earnings, which he alleged were diminished by block-booking. Not only was Mulvey in the business in question but defendant, the alleged wrongdoer, had a contractual relationship with Mulvey and was acting *de facto* as his agent. The instant petitioner is not in the business allegedly restrained, has no contractual relationship with either respondent, and has no agency relationship with any party.*

Since neither *Mulvey* nor *Fields* (in which a petition for certiorari has been filed) conflicts with the enunciation or interpretation by the court below of the applicable law,

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* Indeed, petitioner's franchise agreements expressly disclaim any agency relationship, as noted in the opinion below.

neither should be a basis for granting certiorari to review this case.

Respectfully submitted,

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